

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

19, 1965
629

GLYNN H. GOODMAN, Appellant

v.

UNITED STATES OF AMERICA,
JOHN T. CONNOR, individually and as
Secretary of Commerce of the United
States of America, ALLEN V. ASTIN,
individually and as Director, National
Bureau of Standards, JOHN W. MACY, JR.,
individually and as Chairman, United States
Civil Service Commission, ROBERT E.
HAMPTON, individually and as Commis-
sioner, United States Civil Service Commission,
and LUDWIG J. ANDOLSEK, individually and
as Commissioner, United States Civil Service
Commission,
Appellees.

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 3 1965

Nathan J. Paulson
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Federal Bar Building
1815 H Street, N. W.
Washington 6, D. C.
Attorney for Appellant

QUESTIONS PRESENTED

1. Was a genuine issue as to a material fact raised by appellant's assertion that his resignation on October 5, 1961 was an involuntary resignation?
2. Was a genuine issue as to a material fact raised by appellant's assertion that his resignation was withdrawn?
3. Did the filling in of blanks in the U. S. Civil Service Form 52 by appellees constitute a material alteration of appellant's alleged resignation?

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,654

GLYNN H. GOODMAN,

Appellant,

v.

UNITED STATES OF AMERICA, et al.,

Appellees.

Appeal from the United States District Court
for the District of Columbia

Jurisdictional Statement

This is an appeal docketed August 31, 1965, under the provisions of Title 28, Section 1291, U. S. Code, from an Order of the United States District Court for the District of Columbia entered July 27, 1965, granting summary judgment for the defendants-

appellees — and denying summary judgment for the appellant herein.
Notice of Appeal was filed on July 29, 1965.

Statement of the Case

Appellant was an Honorably Discharged Ten-Point Disabled Veteran of the U. S. Army in World War II. (J. A. 6, 11, 17)

On November 5, 1958, he acquired classified competitive status with a career appointment as an electrician in the National Bureau of Standards. (J. A. 7, 11)

He had classified competitive status when he was removed from his position as electrician, WB-9, \$2.79 per hour in the National Bureau of Standards, Department of Commerce, on October 27, 1961. (J. A. 6)

He requested a pay raise many times of his superiors while employed in the National Bureau of Standards and this annoyed them. (J. A. 12)

On October 4, 1961, he was called into the office of Brent M. Quinn, Assistant Chief, Plant Division, National Bureau of Standards, in Room 1, Sterret House, where he was handed a Notice of Removal, dated the same day, and unsigned; that A. S. Coiner of the Bureau's Personnel Office was present and that the said Coiner laid a resignation on the table which Plaintiff saw for the first time. (J. A. 12, 24, 27-29)

"Of course, we can't tell you to resign, but if you do not, removal proceedings will go ahead," said A. S. Coiner.

"Also, if you do resign, your record will be clear and the charges will be dropped. You can come back to work in a year's time," said Coiner. (J. A. 12, 24, 27-28)

On October 5, 1961, he went to the office of George B. Porter, Personnel Officer, National Bureau of Standards. He was sick with a painful hand and was nervous and upset.

"When do you want to resign?" said George B. Porter.

"I don't know," said Mr. Goodman.

"How about the 27th?" said Porter. (J. A. 13, 24)

Without the advice of counsel and without discussing the matter with his wife, and being sick, nervous and upset, he signed the form resignation on October 5, 1961, and placed in the effective date of October 27, 1961, at the suggestion of George B. Porter, resigning from his livelihood. (J. A. 4, 5, 24, 27-30)

On October 17, 1961, he sent a telegram to the National Bureau of Standards, withdrawing the said resignation. (J. A. 13, 25)

On October 17, 1961, George B. Porter, Personnel Officer, National Bureau of Standards, wrote I. William Stempil, Attorney at Law, who represented Appellant, that the Bureau declines to accept the withdrawal of the resignation. (J. A. 13, 25)

On October 18, 1961, I. William Stempil, Attorney for Glynn H. Goodman, wrote Dr. Allen V. Astin, Director, National Bureau of Standards, saying in part:

"Since when does the Bureau of Standards act so

quickly in matters of this sort without giving the employee, a ten point preference, an opportunity to be heard? I can only conclude that Mr. Porter has created this situation and intends to carry it through himself come h--- or high water." (J. A. 9, 10, 25)

On October 26, 1961, Robert S. Walleigh, Associate Director, National Bureau of Standards, wrote I. William Stempil, denying that pressure was put on Mr. Goodman to resign. (J. A. 14, 25)

On November 16, 1961, I. William Stempil, wrote the U. S. Civil Service Commission, appealing the decision of Robert S. Walleigh, Associate Director, National Bureau of Standards, of October 26, 1961. (J. A. 8, 14, 25)

On November 29, 1961, S. L. Elliott, Chief, Appeals Examining Office, wrote I. William Stempil, attorney for Mr. Goodman, saying that a resignation is voluntary and his was not a separation for cause and therefore the appeal is denied. (J. A. 9, 14)

I. William Stempil, Esquire, passed away and Glynn H. Goodman obtained the file in February, 1964. (J. A. 14, 26, 38)

On April 13, 1964, Donald H. Dalton, Attorney for Appellant, wrote Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission, appealing the forced resignation of October 5, 1961. (J. A. 14)

On September 15, 1964, Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission, wrote

Appellant's attorney stating that the resignation was effective October 5, 1961, and affirming the decision of the Appeals Examining Office in not accepting the appeal. (J. A. 14, 26)

Appellant filed this action, Civil Action No. 2757-64, on November 6, 1964 in the Court below. (J. A. 2, 11-16, 26)

Proceedings Below

On November 6, 1964, Appellant filed a complaint for declaratory and mandatory injunction in the United States District Court for the District of Columbia and an amended complaint on May 17, 1965. (J. A. 2, 11-16, 26) Appellees filed an answer on January 7, 1965. (J. A. 2, 17-18) On March 27, 1965, Appellant filed a motion for discovery and production of documents for inspection, copying or photographing. (J. A. 2, 39) Appellees opposed this motion. (J. A. 2) Appellant's motion was denied on May 24, 1965 (J.A. 2, 40) Appellees filed a motion for summary judgment on March 18, 1965. (J. A. 2, 19) Appellant filed an opposition thereto and also his motion for summary judgment on May 7, 1965. (J. A. 2, 23) On May 7, 1965 Appellant filed a motion to amend complaint and add parties. (J. A. 2, 43) On May 17, Appellant's amended complaint was filed by order of the Court. (J. A. 2, 11-16) On July 27, 1965, the Court below, per Judge Wilbur K. Miller, Senior Circuit Judge, Sitting By Designation and Assignment, granted summary judgment for Appellees and denied summary judgment for Appellant (J. A. 3, 44-45), stating that the resignation was voluntary and that it was not

altered. (J. A. 45) This appeal followed. (J. A. 3, 46)

Statutes Involved

United States Constitution. Fifth Amendment.

The Veterans' Preference Act of 1944 (June 27, 1944). Ch. 287

Section 14, 58 Stat. 390, as amended., 5 U. S. C. 863.

Lloyd-La Follette Act of 1912 (August 24, 1912). Ch. 389

Section 6, 37 Stat. 555, U. S. C. 652.

Executive Order 9830, effective May 1, 1947 (12 F.R. 1259).

POINT RAISED ON APPEAL

Appellees' Motion for Summary Judgment should have been denied and Appellant's Motion for Summary Judgment granted.

SUMMARY OF ARGUMENT

Appellant, Goodman, contends that his resignation was involuntary and therefore his removal was illegal. Also he contends that he withdrew the resignation before it was accepted.

The Secretary of Commerce and the Director, National Bureau of Standards, contend that the resignation was voluntary and it was effective as soon as it was submitted. Furthermore, the resignation was not altered.

Appellant contends that his rights were violated. Civil Service Regulations, Executive Order 9830, Veterans' Preference Act, the Lloyd-La Follette Act and the Fifth Amendment to the U. S. Constitution.

That the filling in of the blanks in the Form 52 resignation constitutes fraud, deception and misrepresentation.

That the defense of laches is without merit.

ARGUMENT

I. The Administrative Action Was Arbitrary And Capricious As The Resignation Was Involuntary, Compulsory And Dictated By Authority And Therefore Lacking In Due Process

The Court below erroneously concluded that the resignation was voluntary instead of involuntary. The Court below ruled, in part, as follows:

"It seems to me that when Goodman had been given the choice to fight the charges, knowing then that they would become a part of his personnel record, and then came back the next day without having been subjected to any pressure, and decided to resign, his resignation therefore was voluntary." (J. A. 45)

The Appellant contends that the resignation was involuntary, compulsory and dictated by authority, and therefore the action of the Bureau of Standards and Civil Service Commission was arbitrary and capricious and lacked due process.

"Involuntary" as defined by Webster's New International Dictionary, Second Edition, Unabridged, states:

- "1. Not proceeding from choice, done, given etc. unwillingly or under compulsion, as involuntary submission.
2. Unwilling; reluctant
3. Not under control of the will."

Webster's Third defines "involuntary":

"(b) dictated by authority or circumstance; compulsory."

March's Thesaurus Dictionary (NY 1958) defines:

"Involuntary; unwilling; resulting from necessity."

Webster's Second defines "voluntary":

- "1. Proceedings from the will or from one's own choice or full consent; produced in or by an act of choice, a voluntary action.
2. Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself or itself; free.
"Our voluntary service he requires." Milton
3. Able to will; free as, man is a voluntary agent."

Webster's Third, although a lesser dictionary, is not as preferable as the Second Edition. Nevertheless, it gives as synonyms for voluntary:

"Voluntary, intentional, deliberate, willful and willing, can agree in meaning done, made, brought about and so on of one's free will. Voluntary implies freedom from a compulsion that could constrain one's choice; often it suggests merely

spontaneity, or if in contrast with involuntary stresses the control of the will."

"My most willing activity is listening to my secretary."

"Voluntary" or "involuntary" takes on the hue of its surroundings. In the analysis of this case, the positions of the parties and the actual environment of the place are of primary importance.

Clearly the facts show that Glynn Goodman was ill and sick with an injured and painful hand, and under a physician's care, when he was forced to sign the resignation. He was told that there was evidence in the safe against him, but this evidence was not shown him, although he requested it. He requested permission to take the Notice of Proposed Removal home with him, which was also refused. This Notice, at that time, was unsigned. Mr. Goodman was told what to sign and the date of the resignation was dictated to him.

The resignation was the act of George B. Porter, Personnel Office, National Bureau of Standards, Department of Commerce, and of Alfred S. Coiner, of the same Personnel Office, and not Goodman's. Mr. Porter handed him the form resignation and told him to put in the date of October 27, 1961.

Without advice of counsel or opportunity to discuss the matter with his wife, and being under a physician's care for an injured hand and nervousness, and being afraid of damage to his reputation, he signed the involuntary resignation, giving up his livelihood.

The dramatic struggle of management and the ill and ailing Goodman, struggling for the resignation, is the nub of the case.

" 'Voluntarily' and 'Involuntarily' are antonymous and therefore irreconcilable words, and the words are merely symbols of ideas, and the ideas can be readily reconciled. Willingness, wilfulness, volition, intention, reside in 'voluntarily', but the mere fact that a worker wills and intends to leave a job does not necessarily and always mean that the leaving is voluntary. Extraneous factors, the surrounding circumstances, must be taken into account, and when they are examined, it may be found that the seemingly voluntary, the apparently intentional, act was in fact involuntary. A worker's physical and mental condition, his personal and family problems, the authoritative demands of legal duties - these are circumstances that exert pressure upon him and imperiously call for decision and action." Bliley Electric Co. v. Unemployment Comp. Bd. of Rev. 45 A 2d. 898, 903, 158 Pa. Super 548.

What was the haste in obtaining the resignation? Why the immediacy? After the purported resignation was signed on October 5, 1961, it was not effective until October 27, 1961.

Surely the facts of this case differentiate. Rich v. Mitchell, 106 U. S. App. D. C. 343, 273, F 2d. 78.

Judge Fahy in Paroczay v. Hodges, 111 U. S. App. D. C. 362, 297 F 2d. 439, decided the matter clearly:

"Defendants point to our decision in Rich v. Mitchell,

106, U. S. App. D. C. 343, 273 F 2d. 78, cert. denied, 368 U. S. 854, contending that it controls this case. We adhere to our decision in that case but we think the facts in the present case are sufficiently different to lead to a different result. In Rich there was no demand for an immediate resignation under threat of immediate charges. The employee was not told to 'sign now'. He was given three days within which to consider the course he would adopt. A request for opportunity to consult family and friends was not rejected, as plaintiff's affidavit states occurred in this case."

Executive Orders 10987 and 10988 of January 17, 1962, were promulgated by the President for such cases as this in order for the employee to obtain all his rights in dealing with management. It recognizes an "Employee-Management" problem and urges that the employee be apprised of his rights and "that no interference, restraint, coercion or discrimination be practiced."

Under the provisions of Executive Order 9830, Goodman was entitled to uniform and equitable treatment which was denied him.

The Lloyd-La Follette Act of 1912 (August 24, 1912, Ch. 389, Section 6, 27 Stat. 555, 5 U. S. C. 652) provides:

"That Act provides that no person in the Classified Service shall be removed therefrom except for such cause as will promote the efficiency of the service and after a presented procedure has been followed."

Federal Personnel Manual Supplement 752-1, page 24.02-25
of the U. S. Civil Service Commission Regulations, states in pertinent part:

"g. Voluntary v. involuntary character of personnel actions.

(1) In the case of Paroczay v. Hodges, the court ruled that the resignation of the plaintiff (Paroczay) was involuntary and, therefore, void and of no effect.

(2) . . . The Commission holds, however, that the principle implicit in the Court's decision extends beyond resignations and beyond the issue of whether or not the employee was given a reasonable time to make a choice, it extends to any situation in which an agency deprives an employee of freedom of choice. Thus, it applies to such tactics as the use of duress, intimidation, or deception as well as to the denial of adequate time to choose between alternatives, and it applies whether these tactics are used to obtain a resignation

In short, the voluntary or involuntary character of a personal action is determined not by the form of the action but by the circumstances which produced it. . .

(3) . . . It is improper for the agency to use duress, intimidation, or deception to force him to choose a particular course of action. The choice must be his own free will or the action is not a voluntary one. In general, for the action to be considered voluntary, it should be evident that the employee

understood the transaction, was free to choose, and was given a reasonable time to make his choice. Also a voluntary action permits the employee to set the effective date. . ."

Although this regulation was promulgated later than the case at bar, the principle of justice which it enunciates is eternal.

Clearly and obviously, the resignation was involuntary. It shocks the conscience that a person gives up a permanent position in the Federal Government with retirement, sick leave, and annual leave benefits.

Also, an involuntary resignation of a veterans' preference eligible does not fulfill the requirements of Section 14 of the Veterans' Preference Act of 1944 (Act of June 27, 1944; Ch 287, Section 14; 58 Stat. 390. 5 U. S. C. 863). This action on the part of the Department does not promote the efficiency of the service.

II. The Resignation Was Withdrawn Before It Was Accepted.

The facts of the case reveal that the alleged resignation was submitted on October 4, 1961, and to be effective on October 27, 1961. It was withdrawn on October 16, 1961.

The withdrawal of the resignation before its effective date raises a clear issue of law. The resignation is not effective. Schafer v. Board of Education, 94 N. E. 2d. 112.

One who resigns an office may recall or revoke his resignation at any time before it is accepted. In Re. Fidelity Assur. Ass'n. 42 F.

Supp. 973, reversed Sims v. Fidelity Assur. Ass'n. 129 F 2d. 442, affirmed 63 S. Ct. 807, U. S. 608, 87 L. Ed. 1032; Poland v. Glover 111 F. Supp. 675.

III. The Filling In Of The Blanks In The Resignation Form Without The Consent Of the Appellant Constitutes Fraud, Deception and Misrepresentation.

In the Form 52, dated October 5, 1961, in the Appellant's handwriting, is the following:

"Oct 5, 1961

"To go outside to advance myself for a better position.

"Oct. 27-1961

Glynn H. Goodman".

Then below under Part I is the following in typewriting:

"(1) Unsuitability for employment in the National Bureau of Standards as evidenced by repeated use of intoxicating beverages to excess.

"(2) Intentional deception in obtaining your employment.

"(3) Conduct unbecoming a Government employee.

"(4) Intentional false and misleading statements on an official document".

Then, on the front side of the Form 52, among other matters, is the following:

"Resigned while action pending to be separated for:
(See over)"

When Goodman signed the resignation, all he put in was: "To go outside to advance myself for a better position", and the dates.

The Form 52 was blank. Goodman did not know of any other writing or typewriting on the Form 52. (J. A. 4-5)

Appellant did not give his consent to the filling in of the blanks. This filling in of the blanks was a fraud, deception and misrepresentation practiced on the Appellant.

Mr. Justice Clifford in Angle v. Northwestern Life Ins. Co., 92 U. S. 330, 340-341, 23 L. Ed. 556, stated:

"Where blanks exist in negotiable securities, delivered to another for use, the custody of the paper, under such circumstances, gives the custodian the right to fill the blanks; but it does not confer authority to make any addition to the terms of the note; and if any such, of a material character, are made by such a party from whom the paper was received, it will void the note, even in the hands of an innocent holder, Ivory v. Michael, 33 Mo. 400".

Clearly in addition to the doctrine of the Paroczay v. Hodges, 111 U.S. App. D. C. 297 F 2d. 439, we have here fraud, deception and misrepresentation by the filling in of the blanks of an involuntary resignation, which clinches the argument of the involuntariness of the resignation.

Goodman was assured by A. S. Coiner, Personnel Officer of the National Bureau of Standards as follows:

"Of course, we can't tell you to resign, but if you do not, removal proceedings will go ahead," said A. S. Coiner. "Also

if you do resign, your record will be clear and the charges will be dropped. You can come back to work in a year's time," said A. S. Coiner.

IV. Appellees' Claim of Laches Is Without Merit.

On September 15, 1964, the Board of Appeals and Review, U. S. Civil Service Commission, affirmed the decision of the Appeals Examining Office not to accept the appeal and stating the resignation was effective in October, 1961.

Appellant came into the court below on November 6, 1964. Surely a delay of 45 days does not constitute laches!

Where fraudulent conduct on the part of Appellees has prevented Appellant from being diligent, equity bars Appellees from setting up such a fraudulent defense. Holmberg v. Armbrrecht, 327 U. S. 392, 66 S. Ct. 582 90 L. Ed. 743, 162 A.L.R. 719.

The Supreme Court has stated that a time delay alone does not constitute laches. In Gallagher v. Cadwell, 145 U. S. 368, 373 12 S. Ct. 873, 36 L. Ed. 738, 740, Mr. Justice Brewer, speaking for the Court, stated:

"That laches is not, like limitation, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced, an inequity founded upon some change in the condition or relation of the property of the parties."

See also Mount Vernon Savings Bank v. Wardman, 84 U. S. App. D. C. 343, 173 F 2d. 648; Hoehn v. Crews, 144 F. 2d. 665, 671, cert. den., 323 U. S. 773 65 S. Ct. 132, 89 L. Ed. 618, reh. den. 323 U. S. 817, 65 S. Ct. 312, 89 L. Ed. 649, Affm'd., 324 U. S. 200, 65 S. Ct. 600, 89 L. Ed. 870.

To support the defense of laches, there must be a showing of prejudice to one of the parties and unreasonable delay. The rule in the Galliher case, supra, and in Sis v. Boarman, 11 App. D.C. 116, 123; and as affirmed by the Supreme Court in Holmberg v. Armbrecht, 327 U. S. 392, 396, 66 S. Ct. 582, 90 L. Ed. 743, establishes that the main ingredient of laches is prejudice. It is clear that there is no prejudice here to Defendant.

Inasmuch as laches is an equitable defense, it is necessary to weigh all the relevant facts before applying the rule. Hammond v. Hopkins, 143 U. S. 224, 250, 12 S. Ct. 418, 36 L. Ed. 134; Pfister v. Cow Gulch Oil Co., 189 F 2d. 311, cert. den., 342 U.S. 887, 72 S. Ct. 177, 96 L. Ed. 665.

In Sis v. Boarman, 11 App. D. C. 116, a time lapse of nineteen years, five months out of twenty years does not constitute laches.

Clearly, Appellant has shown that the resignation was not of his free choice, and that the date was set by the Appellees and dictated by authority. It was an involuntary resignation.

CONCLUSION

That Glynn H. Goodman be restored to his position as electrician in the National Bureau of Standards and back pay be restored to him.

Respectfully submitted,

Donald H. Dalton
Attorney for Appellant

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,654

GLYNN H. GOODMAN, Appellant,
v.
UNITED STATES OF AMERICA, ET AL., Appellees.

JOINT APPENDIX

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Standard Form 53-4 Part
Rev. July 1957
Promulgated by U. S. Civil
Service Commission-FPM-R-1

NOTIFICATION OF PERSONNEL ACTION

50-106-04

1. NAME (LAST [CAPS]-First-Middle-Mr.-Miss-Mrs.) GOODMAN, Glynis H. (Mr.) #22590		2. DATE OF BIRTH 7-2-25	3. IDENTIFICATION (optional) NBS 16
4. THIS IS AN OFFICIAL NOTICE OF THE PERSONNEL ACTION DESCRIBED BELOW, WHICH AFFECTS YOUR EMPLOYMENT. GENERAL INFORMATION CONCERNING YOUR EMPLOYMENT APPEARS ON THE REVERSE SIDE OF THIS FORM.			
5. NATURE OF ACTION (standard terminology must be used) Resignation (Career)		6. EFFECTIVE DATE OF ACTION Close of Business 10-27-61	
7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY 1961 OCT 31 AM 10 09 OFFICE OF INVESTIGATION SECURITY		8. POSITION TITLE AND NUMBER TO-	
9. SERIES, GRADE, SALARY W-2305-9 \$2.79 p.h. (3rd step)		10. NAME AND LOCATION OF OFFICE BY WHICH EMPLOYED National Bureau of Standards 50. Plant 2. Electric Shop Washington, D.C.	
11. DUTY STATION		12. APPORTIONED POSITION <input type="checkbox"/> Yes <input type="checkbox"/> No Maryland <input type="checkbox"/> Appertionment Waived <input type="checkbox"/> Proved	
13. VETERAN PREFERENCE <input type="checkbox"/> No <input type="checkbox"/> 5-pt. <input checked="" type="checkbox"/> 10-pt. Disc. <input type="checkbox"/> 10-pt. Other		14. TENURE GROUP I-A	
15. POSITION OCCUPIED IS IN THE: <input checked="" type="checkbox"/> Competitive Service <input type="checkbox"/> Excepted Service		16. DATE OF APPOINTMENT AFFIDAVITS (occasions only)	
17. PAYROLL DEDUCTIONS <input checked="" type="checkbox"/> GAR <input type="checkbox"/> FICA <input checked="" type="checkbox"/> FEGLI		18. DATE OF APPOINTMENT AFFIDAVITS (occasions only)	
19. REMARKS: <input type="checkbox"/> a. Subject to completion of 1 year probationary (or trial) period commencing _____ <input type="checkbox"/> b. Service counting toward career (or permanent) tenure from: _____ Separations: Show reasons below, as required. Check, if applicable: <input type="checkbox"/> c. During probation <input type="checkbox"/> d. From appointment of 6 months or less Reason: "To go outside to advance myself for a better position." Address: 3404 Taylor Street Brantwood, Maryland. Any accumulated and accrued leave to be paid in a lump sum. Resigned while action pending to be separated for: (1) Unsuitability for employment in the National Bureau of Standards as evidenced by repeated use of intoxicating beverages to excess. (2) Intentional deception in obtaining your appointment. (3) Conduct unbecoming a Government employee. (4) Intentional false and misleading statements on an official document. Security Control Officer of the Department of Commerce has been requested to remove the investigative file on this individual from the file of the Commission, Washington, D. C. Social Security No. 250-03-0267			
20. EMPLOYING DEPARTMENT OR AGENCY DEPARTMENT OF COMMERCE		21. SIGNATURE (or other authentication) AND TITLE S/ George R. Porter, Personnel Officer	
22. OFFICE MAINTAINING OFFICIAL PERSONNEL FOLDER (if different than item 10, above) National Bureau of Standards Washington, D.C.		23. DATE: 10-26-61	

6. UTILITY COPY

Govt's EXHIBIT NO. 2

Y AVAILABLE

al bound volume

Standard Form 64- (16 PART) Rev. July 1957 Promulgated by U.S. Civil Service Commission-FPM-R-1				NOTIFICATION OF PERSONNEL ACTION									
1. NAME (LAST [CAPS]-First-Middle-Mr.-Miss-Mrs.) GOODPAT, Clyn Earl (Mr.)			2. DATE OF BIRTH 7-2-25		3. IDENTIFICATION (Optional) NBS 3								
4. THIS IS AN OFFICIAL NOTICE OF THE PERSONNEL ACTION DESCRIBED BELOW, WHICH AFFECTS YOUR EMPLOYMENT. GENERAL INFORMATION CONCERNING YOUR EMPLOYMENT APPEARS ON THE REVERSE SIDE OF THIS FORM.													
5. NATURE OF ACTION (Standard Terminology Must be Used) Transfer (Career-Conditional) - Correction			6. EFFECTIVE DATE OF ACTION 9-21-53		7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY C. S. Reg. 2.501								
FROM- Elevator Repairer's Helper NS-5 \$1.96 ph (2nd step) General Services Administration Washington, D. C.			8. POSITION TITLE AND NUMBER 9. SERIES, GRADE, SALARY 10. NAME AND LOCATION OF OFFICE BY WHICH EMPLOYED 11. DUTY STATION		TO- Electrician (E-616.1) NS-2305-S \$2.12 ph (2nd step) National Bureau of Standards 50. Plant Division 2. Electric Shop Washington, D. C.								
<input type="checkbox"/> Yes			12. APPORTIONED POSITION		<input type="checkbox"/> Yes <input type="checkbox"/> Apportionment Waived STATE: Maryland <input type="checkbox"/> Proved								
13. VETERAN PREFERENCE <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">No.</td> <td style="width: 25%;">5-pt.</td> <td style="width: 25%;">10-pt. Disab.</td> <td style="width: 25%;">10-pt. Other</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td></td> </tr> </table>		No.	5-pt.	10-pt. Disab.	10-pt. Other			<input checked="" type="checkbox"/>		14. TENURE GROUP II-A		15. POSITION OCCUPIED IS IN THE: <input checked="" type="checkbox"/> Competitive Service <input type="checkbox"/> Excepted Service	
No.	5-pt.	10-pt. Disab.	10-pt. Other										
		<input checked="" type="checkbox"/>											
16. APPROPRIATION From: To:			17. PAYROLL DEDUCTIONS <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">CSR</td> <td style="width: 33%;">FICA</td> <td style="width: 33%;">FGLI</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>		CSR	FICA	FGLI	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18. DATE OF APPOINTMENT AFFIDAVITS (accessions only)		
CSR	FICA	FGLI											
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>											
19. REMARKS: <input checked="" type="checkbox"/> a. Subject to completion of 1 year probationary (or trial) period commencing <u>11-5-57</u> <input checked="" type="checkbox"/> b. Service counting toward career (or permanent) tenure from: <u>11-5-57</u> Separations: Show reasons below, as required. Check, if applicable: <input type="checkbox"/> c. During probation <input type="checkbox"/> d. From appointment of 6 months or less Acquired status by Conversion to Career-Conditional Appointment 1-27-53 with G.S.A. Subject to satisfactory medical and chest x-ray, if required. R. O. 10450 Sec 3 (a) completed 12-27-57. Subject to satisfactory report of investigation as to suitability for employment. Service Computation Date: 9-1-54. This action corrects Item 13 on SF 50 dated <u>9-15-53</u> and <u>1-9-59</u> to show 10 pt. disab. pref., previously shown as 5 pt. <div style="text-align: center; margin-top: 20px;"> <i>noted on ltr</i> </div>													
20. EMPLOYING DEPARTMENT OR AGENCY DEPARTMENT OF COMMERCE				22. SIGNATURE (or Other Authentication) AND TITLE S/George R. Porter, Personnel Officer									
21. OFFICE MAINTAINING OFFICIAL PERSONNEL FOLDER (if different than item 10, above) National Bureau of Standards 22690 Washington 25, D. C.				23. DATE: 1-30-59									

4. Personnel Folder Copy

BEST COPY

from the original

Filed March 18, 1965

November 16, 1961

Gentlemen:

I have been retained by Glynn H. Goodman, who, on October 4th, 1961 was handed a statement of charges which indicated that he had the choice of refuting those charges or resigning under a cloud.

Mr. Goodman, without advice of counsel, but by subtle pressure placed on him by superiors at the Bureau of Standards, was forced into resigning his position effective at the end of business on October 27, 1961.

Mr. Goodman insists that as a 10 point veteran and appointed from the competitive list he has been abused and ill-advised concerning his rights and is therefore forced to resort to this course of seeking relief.

When Mr. Goodman realized that he had been duped into resigning, he advised that he desired to rescind the resignation, but the Bureau chose to refuse to accept his recision.

It is his desire that Civil Service hear this entire case and that it decide that the method employed in securing his resignation was not in accordance with good practice and was not secured in good faith and that he be allowed to resume his work at the Bureau at the earliest possible date.

May this letter serve as his official notice of appeal from the action taken by the Bureau?

Yours very truly,

I. William Stempil
Counsel for Glynn H. Goodman

Filed March 18, 1965

Dear Mr. Stempel:

This is in reply to your letter of November 16, 1961 in behalf of Mr. Glynn H. Goodman, Electrician, Bureau of Standards, Department of Commerce who resigned his position effective on October 27, 1961.

A resignation is a voluntary termination of one's services to his employer. Neither the law nor the Commission's regulations provide a right of appeal to the Commission to Federal employees whose services are terminated by resignation.

You indicate that the agency offered Mr. Goodman the choice of refuting charges preferred against him in letter dated October 4, 1961 or resigning under a cloud.

Mr. Goodman elected to resign rather than have the agency pursue the removal proceeding which it had initiated against him.

In so doing Mr. Goodman cut off any right of appeal he may have had in event the agency separated him for cause.

Under the circumstances we cannot accept your appeal in behalf of Mr. Goodman.

Sincerely yours,

S. L. Elliott, Chief
Appeals Examining Office

Filed March 18, 1965

October 18, 1961

Dear Dr. Astin:

The files of Glynn H. Goodman will reveal that on October 4, 1961, George R. Porter, Personnel Officer at the Bureau of Standards caused to be handed to Mr. Goodman a letter indicating that Mr. Porter intended to remove Mr. Goodman from the rolls of the

Bureau as a person unfit for service on various charges as indicated in that letter.

When Mr. Goodman sought assistance and counsel he claims he received none other than a strong suggestion to resign as quickly as possible, and as Mr. Goodman relates the matter to me, he did resign on October 5, 1961 under pressure and without advice of counsel.

It seems that all of this turmoil began when Mr. Goodman claims he was passed over for a better job paying more money and when he attempted to complain and investigate the reason for the so-called "brush-off"-- this latest incident resulted.

Mr. Porter's letter to me dated October 17, 1961 indicates that the Bureau of Standards declines to grant Mr. Goodman's desire to rescind the resignation which was forced upon him.

My question at the moment is, - Since when does the Bureau of Standards act so quickly in matters of this sort without giving the employee, a ten-point veteran, an opportunity to be heard? I can only conclude that Mr. Porter has created this situation and intends to carry it through himself come hell or high water! Am I right or wrong?

Yours very truly,

I. William Stempil

Filed May 17, 1965

AMENDED COMPLAINT FOR DECLARATORY AND MANDATORY
INJUNCTION ORDERING THE SECRETARY OF COMMERCE TO
REINSTATE PLAINTIFF IN HIS POSITION AS ELECTRICIAN,
WB-9, \$2.79 PER HOUR IN THE NATIONAL BUREAU OF
STANDARDS AND FOR BACK PAY

Plaintiff amends his complaint and represents to this Honorable Court as follows:

1. This is an action in equity wherein the matter in controversy exceeds the value of Ten Thousand (\$10,000) Dollars exclusive of interest and costs, and arises, in the District of Columbia under the laws of the United States.

2. Plaintiff, Glynn H. Goodman, is a citizen of the United States and a resident of Maryland. He entered the General Services Administration as an elevator repairer's helper WB-5, on November 5, 1957; he was appointed an electrician WB-9, \$2.79 per hour, in the National Bureau of Standards on September 21, 1958. Since the date of appointment in the classified competitive service as an electrician, he has served continuously until October 27, 1961, when he was illegally, arbitrarily and capriciously separated from his employment while holding a permanent position as electrician, WB-9, \$2.79 per hour, in the National Bureau of Standards, Department of Commerce.

3. That Plaintiff was partially disabled in World War II and is a ten-point Veterans Preference Eligible who comes within the purview of the Veterans Preference Act 5 U. S. C. 851 et seq.

4. The United States of America as a Defendant; Defendant John T. Connor is Secretary of Commerce of the United States of America, and Plaintiff's highest supervisory officer; Allen V. Astin is Director of the National Bureau of Standards and Plaintiff's supervisory officer; John W. Macy, Jr. is Chairman and Defendants Robert E. Hampton and Ludwig J. Andolsek are Commissioners of the United States Civil Service Commission, all of whom officially reside in the District of Columbia.

5. He requested a pay raise many times, while employed in the National Bureau of Standards. These requests irritated his superiors.

6. On October 4, 1961, he was called into the office of Brent M. Quinn, Assistant Chief, Plant Division, National Bureau of Standards, where he was handed a Notice of Removal, dated the same day, which was unsigned. A. S. Coiner, of the Personnel Office, said that the National Bureau of Standards had evidence against him which was in the safe. This was not shown him. He requested permission to take the Notice of Proposed Removal home with him, which was refused. The said A. S. Coiner stated, "If you resign, it will not go on your record," as he placed a filled-in resignation on the table in front of Goodman, which the latter saw for the first time.

7. On October 5, 1961, he went to the Office of George B. Porter, Personnel Officer, National Bureau of Standards. He was sick with a painful and injured hand, and was nervous and upset. He had been under a physician's care for a long time.

"When do you want to resign?" said George B. Porter.

"I don't know," said Mr. Goodman.

"How about the 27th?" said Porter.

8. The said Glynn H. Goodman was deceived by the fraud, deception, and misrepresentation of the said George B. Porter, and A. S. Coiner of the Personnel Division of the National Bureau of Standards, and without the advice of counsel and without discussing the matter with his wife, and being sick, nervous, and upset, he signed the form resignation, and put in the date at the suggestion of the said George B. Porter, resigning his livelihood as Electrician WB-9.

9. On October 16, 1961, he sent a telegram to the National Bureau of Standards withdrawing his resignation.

10. On October 17, 1961, George B. Porter, Personnel Officer, National Bureau of Standards, wrote I. William Stempil, Attorney at Law, who represented Glynn H. Goodman, that the Bureau of Standards declines to grant consent to the withdrawal of the resignation.

11. On October 18, 1961, I. William Stempil, Attorney at Law, for Glynn H. Goodman, wrote Dr. Allen V. Astin, Director, National Bureau of Standards, saying in part:

"Since when does the Bureau of Standards act so quickly in matters of this sort without giving the employee, a ten point preference, an opportunity to be heard? I can only conclude that Mr. Porter has created this situation and intends to carry it through himself come h... or high water."

12. On October 26, 1961, Robert S. Walleigh, Associate Director, National Bureau of Standards wrote I. William Stempil, denying that pressure was put on Mr. Goodman to resign.

13. On November 16, 1961, I. William Stempil wrote the U. S. Civil Service Commission the decision of Robert S. Walleigh, Associate Director, National Bureau of Standards, of October 26, 1961.

14. On November 29, 1961, S. L. Elliott, Chief, Appeals Examining Office, wrote I. William Stempil, Attorney for Mr. Goodman, saying that a resignation is voluntary and that his was not a separation for cause and therefore the appeal is denied.

15. I. William Stempil, Esquire, passed away and Glynn H. Goodman obtained the file in February, 1964.

16. On April 13, 1964, Donald H. Dalton, Attorney for Plaintiff, wrote Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission, appealing the forced resignation of October 5, 1961.

17. On September 15, 1964, Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission wrote Plaintiff's attorney stating that the resignation was effective October 5, 1961, and affirming the decision of the Appeals Examining Office in not accepting the appeal.

18. Plaintiff alleges that the action of the Civil Service Commission in denying him an appeal is arbitrary, capricious, illegal and is such action that will not promote the efficiency of the service and is

not in accordance with law; and is in excess of statutory jurisdiction; and without observance of procedure required by law.

19. Plaintiff alleges that the actions of the Civil Service Commission and the Department of Commerce and the National Bureau of Standards in removing him from his position is not within the purview of Section 14 of the Veterans Preference Act of 1944, as amended, was arbitrary and capricious and illegal and not in accordance with law; was in excess of statutory jurisdiction; without observance of procedures required by law.

20. The Plaintiff seeks a declaratory and mandatory injunction under the provisions of 5 U.S.C., Section 863 (the Veterans Preference Act, as amended, Section 14); 28 U.S.C. Sections 2201-2202 (the Declaratory Judgment Act); 5 U.S.C. Sections 1001-1009 (the Administrative Procedure Act); 5 U.S.C. Section 652 (a) (the Lloyd-La Follette Act of 1912, as amended); 5 C.F.R., 9.201, 9.301-9.307; and other federal laws and regulations.

21. Plaintiff alleges that the action of the U. S. Civil Service Commission in holding that Plaintiff's resignation was voluntary and that it was not revoked, and in denying him an oral hearing is arbitrary, capricious, and illegal, and is such action that will not promote the efficiency of the service and is not in accordance with law; and in excess of statutory jurisdiction; and without observance of procedure required by law.

22. Plaintiff alleges that the actions of the Department of Commerce and the National Bureau of Standards in separating him, in denying him an oral hearing, in holding that the Plaintiff's resignation was voluntary, and in refusing to revoke his resignation, is arbitrary, capricious and illegal; and is such action that will not promote the efficiency of the service and is not in accordance with law; and is in excess of statutory jurisdiction; and without observance of procedure required by law.

WHEREFORE, the Plaintiff prays that this Honorable Court will:

1. Take jurisdiction of the case.
2. Issue a declaratory judgment, declaring that Plaintiff's resignation is void, unlawful, and of no effect and that Plaintiff was never legally separated from his position in the National Bureau of Standards of the Department of Commerce.
3. Issue a mandatory injunction, ordering and directing the said Defendants as are officials of the Department of Commerce to restore Plaintiff to his proper position in the National Bureau of Standards of the Department of Commerce, as of the date of his illegal and unlawful removal, together with all rights, benefits, and privileges that would or might accrue from a continuity of service from the date of such illegal and unlawful discharge of the date of judgment.
4. And for such other or further relief that may to the Court seem meet and proper.

Glynn H. Goodman

Filed January 7, 1965

A N S W E R

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense

Plaintiff's claim is barred under the doctrine of laches.

Third Defense

Specifically answering the numbered paragraphs of the complaint, defendants aver as follows:

1. They are not required to answer the jurisdictional allegations of paragraph 1.
2. They admit the allegations of paragraph 2, except that they deny that plaintiff was illegally, arbitrarily and capriciously separated from his employment.
- 3.4. They admit that plaintiff is entitled to preference under the Veterans Preference Act, 5 U.S.C. 851 et seq., and they admit the allegations of paragraph 4.
5. They contend that the allegations of paragraph 5 are irrelevant, but insofar as answer may be required, they admit the allegations of sentence 1 and deny those of sentence 2.
- 6.7. They deny the allegations of paragraphs 6 and 7, except insofar as said allegations may be consistent with the administrative record which will be filed herein.

8. They deny the allegations of paragraph 8.

9.10. They admit the allegations of paragraphs 9 and 10.

11. They admit that plaintiff's counsel wrote to Dr. Astin, and aver that they will furnish the Court with a certified copy of said letter which will accurately reflect the entire contents thereof.

12. They admit the allegations of paragraph 12.

13.14. They admit that plaintiff appealed to the Civil Service Commission and that the Appeals Examining Office thereof declined to entertain the appeal.

15. They are without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 15.

16.17. They admit that plaintiff's counsel on April 19, 1964 wrote to the Board of Appeals and Review, Civil Service Commission, and that said Board declined to review plaintiff's resignation but they deny that plaintiff's resignation was forced.

18.19. They deny the allegations of paragraphs 18 and 19.

20. They are not required to answer the conclusions of law of paragraph 20 but aver that the statute and regulations upon which plaintiff relies are not applicable herein.

21.22. They deny the allegations of paragraphs 21 and 22.

Defendants deny all allegations not otherwise specifically answered herein, except that they admit those allegations which are consistent with the administrative record which will be filed in this cause.

Filed March 18, 1965

MOTION FOR SUMMARY JUDGMENT

Defendants through their attorney, the United States Attorney for the District of Columbia, respectfully move the Court to grant judgment for them on the ground that the pleadings and the certified copies of records and regulations of the Civil Service Commission and the Department of Commerce relevant to plaintiff's claim, marked Government Exhibits A, B, C and D, which are attached hereto and made a part hereof by reference, disclose that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law.

Filed March 18, 1965

STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 9(h)

The material facts involved in this cause are set forth in the certified copies of administrative records and affidavit concerning plaintiff which are filed herein, and they may be summarized for purposes of this motion as follows:

1. From September, 1958 to October, 1961 plaintiff was employed as an electrician at the National Bureau of Standards, Department of Commerce (hereinafter referred to as "the Bureau").

2. In May, 1961 the Bureau initiated proceedings to secure secret security clearance for plaintiff which would permit him to enter and work in restricted areas and thereby enable the Bureau fully to utilize his services as an electrician. (Memo of Coiner, Comm. rec.)

3. The investigation incident to the aforementioned security clearance proceedings developed adverse information concerning plaintiff of such a nature that the Bureau determined that his removal from his position appeared warranted. On October 2, 1961 the personnel officer prepared a letter of charges proposing such removal but left it undated and unsigned. A meeting was arranged by Bureau officials to discuss the proposed action with plaintiff. (Memo of Coiner, Comm. rec.)

4. At the meeting, plaintiff read the letter of charges and was told by Mr. Coiner of the Personnel Office of the Bureau that the reason it was undated and unsigned was to give him an opportunity to resign and thereby prevent the charges from becoming a part of his official record; that he was not being asked to resign; that the Bureau could not ask him to resign; that if plaintiff did not elect to resign, the letter of charges would be dated, signed and delivered to him; that once the letter was dated, signed and delivered it would become a part of his official record. Plaintiff being unable to decide whether to resign or to accept the letter of charges, requested an opportunity

to discuss the matter with Mr. Porter, Personnel Officer. (Memo of Coiner, Comm. rec.; Goodman affidavit, CSC rec.)

5. After talking to Mr. Porter, plaintiff stated that he wished to accept the letter of charges. Mr. Porter then dated and signed the letter and handed it to plaintiff who acknowledged receipt thereof on October 4, 1961. (Memo of Coiner, Comm. rec.; p. 25, 33, CSC rec.)

6. On October 5, 1961, plaintiff went to Mr. Porter's office and stated that after thinking the matter over he had decided to resign. Mr. Coiner furnished him with a standard form 52, request for personnel action. Plaintiff wrote on the form the reason for his resignation, the effective date thereof and signed it. (Memo of Coiner, Comm. rec.; p. 22-23, CSC rec.; and Goodman affidavit)

7. The Bureau accepted plaintiff's resignation on October 5, 1961.

8. On October 16, 1961, plaintiff, by a telegram addressed to Mr. Porter, stated that he intended to defend himself against the letter of charges; that he had retained an attorney for that purpose and that he was recalling and rescinding his resignation because it was coerced.

9. Mr. Porter, by letter, advised plaintiff's counsel that a resignation is binding on an employee once he has submitted it, and may not be withdrawn thereafter except with the consent of the agency. The Bureau declined, for reasons set forth in letters dated October 17

and 26, 1961 to plaintiff's counsel, to grant consent to the withdrawal of the resignation. (p. 26, 24, CSC rec.)

10. Plaintiff appealed to the United States Civil Service Commission (hereafter referred to as "the Commission") by letter of his counsel dated November 16, 1961.

11. The Appeals Examining Office of the Commission, by letter of November 29, 1961, advised plaintiff's counsel that plaintiff elected to resign rather than have the agency pursue the removal proceeding which it had initiated against him and in so doing he had cut off any right of appeal he might have had. Under the circumstances, it declined to accept plaintiff's appeal.

12. In April, 1964 plaintiff appealed to the Board of Appeals and Review of the Commission from the 1961 decision of the Appeals Examining Office.

13. The Board of Appeals and Review, by letter of September 15, 1964, affirmed the decision of the Appeals Examining Office not to accept the appeal.

14. Plaintiff instituted this action in November, 1964.

Filed May 7, 1965

OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT.

Plaintiff by counsel opposes Defendant's motion for summary judgment and moves the court for summary judgment in his favor against Defendants on the ground that there is no genuine issue as to material fact and that Plaintiff is entitled to judgment as a matter of law.

Donald H. Dalton

Filed May 7, 1965

PLAINTIFF'S STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 9 (h)

The Plaintiff contends that there is no genuine issue to the following material facts:

1. Plaintiff was partially disabled in World War II and is a ten-point Veterans Preference Eligible.
2. Plaintiff was appointed an electrician, WB-9, \$2.79 per hour in the National Bureau of Standards on September 21, 1958.
3. He had Classified Competitive status when he was removed from his position as electrician, WB-9, \$2.79 per hour in the National Bureau of Standards on October 27, 1961.

4. He requested a pay raise many times of his superiors, while employed in the National Bureau of Standards (Complaint, Pl. Affidavit), and this annoyed them.

5. On October 4, 1961, he was called into the office of Brent M. Quinn, Assistant Chief, Plant Division, National Bureau of Standards in Room 1, Sterrett House, where he was handed a Notice of Removal, dated the same day, and unsigned; that A. S. Coiner of the Bureau's Personnel Office was present and that the said Coiner laid a resignation on the table which Plaintiff saw for the first time (Complaint, Pl.'s Affidavit, Quinn's Affidavit).

"Of course, we can't tell you to resign, but if you do not, removal proceedings will go ahead", said A. S. Coiner.

"Also, if you do resign, your record will be clear and the charges will be dropped. You can come back to work in a year's time", said Coiner. (Complaint, Affidavit, Quinn's Affidavit).

6. On October 5, 1961, he went to the office of George B. Porter, Personnel Officer, National Bureau of Standards. He was sick with a painful hand and was nervous and upset.

"When do you want to resign?" said George B. Porter.

"I don't know", said Mr. Goodman.

"How about the 27th?" said Porter.

7. Without the advice of counsel and without discussing the matter with his wife, and being sick, nervous and upset, he signed the form resignation on October 5, 1961, and placed in the effective date of October 27, 1961, at the suggestion of George B. Porter,

resigning from his livelihood. (Complaint, Pl.'s Affidavit)

8. On October 17, 1961, he sent a telegram to the National Bureau of Standards, withdrawing the said resignation.

9. On October 17, 1961, George B. Porter, Personnel Officer, National Bureau of Standards, wrote I. William Stempel, Attorney at Law, who represented Plaintiff that the Bureau declines to accept the withdrawal of the resignation.

10. On October 18, 1961, I. William Stempel, Attorney at Law, for Glynn H. Goodman, wrote Dr. Allen V. Astin, Director, National Bureau of Standards, saying in part:

"Since when does the Bureau of Standards act so quickly in matters of this sort without giving the employee, a ten point preference, an opportunity to be heard? I can only conclude that Mr. Porter has created this situation and intends to carry it through himself come h... or high water."

11. On October 26, 1961, Robert S. Walleigh, Associate Director, National Bureau of Standards wrote I. William Stempel, denying that pressure was put on Mr. Goodman to resign.

12. On November 16, 1961, I. William Stempel, wrote the U. S. Civil Service Commission the decision of Robert S. Walleigh, Associate Director, National Bureau of Standards, of October 26, 1961.

13. On November 29, 1961, S. L. Elliott, Chief, Appeals Examining Office, wrote I. William Stempel, attorney for Mr. Good-

man, saying that a resignation is voluntary and his was not a separation for cause and therefore the appeal is denied.

14. I. William Stempil, Esquire, passed away and Glynn H. Goodman obtained the file in February, 1964.

15. On April 13, 1964, Donald H. Dalton, attorney for Plaintiff, wrote Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission, appealing the forced resignation of October 5, 1961.

16. On September 15, 1964, Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission, wrote Plaintiff's attorney stating that the resignation was effective October 5, 1961, and affirming the decision of the Appeals Examining Office in not accepting the appeal.

17. Plaintiff filed this action on November 6, 1964.

Donald H. Dalton

Filed May 7, 1965

**STATEMENT OF GENUINE ISSUES
PURSUANT TO LOCAL RULE 9 (h)**

1. That Plaintiff's resignation was involuntary.
2. That Plaintiff's resignation was withdrawn and revoked before it was accepted.

3. That the filling in of the blanks in the Form 52 resignation constitutes fraud, deception and misrepresentation.

4. The Defense of Laches is without merit.

Donald H. Dalton

Filed May 7, 1965

AFFIDAVIT

I, Brent M. Quinn, on oath depose and say that I personally know Glynn H. Goodman approximately six years; that I was assistant chief, Plant Division, National Bureau of Standards, Department of Commerce when the said Glynn H. Goodman was employed there;

Approximately in the early part of October, 1961, Mr. A. S. Coiner of the Personnel Office, National Bureau of Standards, informed me that the officials of the Department of Commerce had derogatory information about Mr. Goodman and that he was an undesirable employee and should be removed.

I asked Mr. Hylton Graham, chief of the Plant Division about the matter, but he did not discuss the issue.

The above said A. S. Coiner informed me that Mr. Graham was of the opinion that Mr. Goodman should be removed.

On October 4, 1961, the said Glynn H. Goodman came into my office, Room 1, Sterret House, National Bureau of Standards. Mr.

A. S. Coiner was present, with a resignation already prepared for Mr. Goodman's signature, which Mr. Goodman did not know about at that time. The resignation was placed on the table before Mr. Goodman to see.

"Of course we can't tell you to resign, but if you do not, removal proceedings will go ahead," said A. S. Coiner. "Also, if you do resign, your record will be clear and the charges will be dropped. You can come back to work in a year's time."

A discussion arose as to whether Mr. Goodman could come back to work after a bar of one year. Mr. Coiner stated that Goodman could come back after a year.

In my opinion, under the circumstances, Glynn H. Goodman was forced to resign from his position as Electrician in the National Bureau of Standards.

Brent M. Quinn

Filed May 7, 1965

AFFIDAVIT

District of Columbia, ss:

May 6, 1965

City of Washington

Glynn H. Goodman, being first duly sworn on oath, deposes and says that he was employed as an electrician, WB-9, \$2.79 per hour in the National Bureau of Standards, Department of Commerce, in

October, 1961; that on October 5, 1961, he was sick, nervous and upset and under a physician's care when he went into the office of George B. Porter, Bureau of Standards Personnel Officer; that the said George B. Porter had signed the letter of proposed removal, and also advised him to resign; that the Form 52, which he signed on October 5, 1961, was blank when it was presented to him and he only wrote the following and was only cognizant of the following:

"October 5, 1961

"To go outside to advance myself for a better position.

"October 27, 1961

Glynn H. Goodman".

All the other writing and typewriting, except printing, was placed there by the Department of Commerce, without his knowledge and consent and outside of his presence; it was placed there after he had signed the resignation.

The form resignation that he signed was the design, will and intent of the officials of the National Bureau of Standards - it was not a voluntary act on his part and not of his own free will and it was dictated by A. S. Coiner and George B. Porter of the National Bureau of Standards, Department of Commerce.

A. S. Coiner of the Personnel Office of the National Bureau of Standards assured him that if he signed the resignation, his record would be clear; however, the Form 52 shows derogatory matter in the Letter of Charges against him.

That in October, 1961, he retained I. William Stempil, a District of Columbia lawyer, to represent him in the personnel action. Mr. Stempil passed away and he did not obtain the file from Mr. Stempil's effects until February 1964; that he tried many times to obtain the file but was unsuccessful; that he is not a lawyer, but an electrician and did not know what to do to determine the status of the case without the late attorney's file; that the delay was unavoidable on his part.

Glynn H. Goodman

Subscribed and sworn to before me, a Notary Public, this 6th day of May, 1965.

Filed March 18, 1965

TO : File of Glynn H. Goodman DATE: October 17, 1961
FROM : A. S. Coiner, Personnel
 Management Specialist
 Personnel Division
 National Bureau of Standards
SUBJECT : Citation of circumstances surrounding the submission
 of resignation of subject employee.

On Wednesday, October 4, 1961, Mr. George R. Porter, Personnel Officer, in his office and in my presence, personally handed to Mr. Glynn H. Goodman a letter of charges of that date, showing

specifically and in detail why it was proposed to remove him from his position. On the next day, Thursday, October 5, 1961, Mr. Goodman voluntarily came to Mr. Porter's office and also in my presence submitted, in writing, a formal resignation, to become effective at the close of business on October 27, 1961.

On October 16, 1961, Mr. Porter received a telegram from Mr. Goodman stating that he intended to defend himself against the charges preferred against him in Mr. Porter's letter of October 4, 1961; that he had retained Attorney I. William Stempel to defend him; and alleged that he had been coerced into resigning and demanded that he be permitted to recall his resignation.

In view of Mr. Goodman's entirely false claim that coercion had been used to secure his resignation, I feel it incumbent upon me to place in Mr. Goodman's personnel file, information which will completely refute his allegation. The facts preceding the submission of Mr. Goodman's resignation on October 5, 1961 follow:

In order to fully utilize Mr. Goodman's services as an Electrician, it became necessary to secure Secret security clearance for him, so that he could enter and work in restricted areas of the Bureau. Accordingly, on or about May 3, 1961, certain forms were filled out by both the Bureau and Mr. Goodman and sent to the Director, Investigations and Security, Department of Commerce, for processing. The following investigation developed serious adverse information, which was furnished to the Bureau "for appropriate

action" by the above mentioned Security officer on June 19, 1961.

The adverse information was of such a nature it was felt that, in the interests of the Bureau, Mr. Goodman's removal from his position appeared to be warranted. Accordingly, on or about Monday, October 2, 1961, Mr. Porter, the Personnel Officer, prepared a letter of charges, specifically and in detail, proposing such removal but left it undated and unsigned. The reason for not dating and signing the letter was to give Mr. Goodman a chance to resign -- if he so elected -- and thereby prevent the charges from becoming a part of his official record. In order to determine Mr. Goodman's wishes in the matter, I requested the Acting Chief, Plant Division, to set up a meeting in his office with Mr. Goodman and myself, so that I could discuss the proposed action with him. On or about 9:00 a.m. on Tuesday morning, October 3, 1961, I reported to the office of Mr. Quinn, the Acting Chief of the Plant Division, and in his presence, and in the presence of Mr. Taylor, the Administrative Officer, and Mr. Augustyn, the Electric Shop Acting Foreman, I discussed the proposed action with Mr. Goodman. Knowing all of the individuals present quite intimately, including Mr. Goodman, we met in a very friendly atmosphere. With a background of over thirty years of personnel work, during which I have had to handle many cases of this type, I was extremely careful to avoid the appearance of exerting any pressure whatsoever to cause Mr. Goodman to make a decision with which he was not fully in accord. I opened the conversation

with Mr. Goodman by telling him that I was sorry that it was my duty to discuss with him a very serious matter concerning his position in the Bureau; that serious derogatory information had come to light through the investigation made in connection with our attempt to secure Secret security clearance for him; and that the Bureau considered this information serious enough to propose his removal from his position. I told him that I had in my hand an undated, unsigned letter in which charges were listed specifically and in detail; and that I wanted him to read it carefully, taking as much time as he needed. I told him the reason for not dating and signing the letter was to give him an opportunity to resign and thereby prevent the charges from becoming a part of his official record. I told him that I wanted him to clearly understand that we were not asking for his resignation; that we could not do so; that we could suggest that an employee consider such an action -- if we thought it might be in his own best interests. I told him that if he did not elect to resign, the letter of charges would be dated, signed and delivered to him; that he would have ten days in which to answer the charges, and that he would have appeal rights under Section 14 of the Veterans Preference Act, etc., if our final decision was to remove him. I also told him that if he elected to receive the letter of charges, and it was officially delivered to him, it would become a part of his personnel record; and that if he elected to resign after that, our records would have to show that he

resigned while the stated charges were pending. Mr. Goodman asked certain questions which indicated he clearly understood the situation and the purpose of my visit. After reading and re-reading the letter several times, Mr. Goodman made some comments concerning his numerous arrests for being drunk and disorderly, etc. He finally said that he couldn't make up his mind as to whether he should resign or take the letter of charges; that he would like to talk to Mr. Porter, the Personnel Officer. I said that Mr. Porter would be glad to discuss the matter with him, and suggested that he think the thing over for the rest of the day and come to Mr. Porter's office at 8:30 a.m. the next day, Wednesday, October 4, 1961. He agreed, and the interview ended. On the next day, as agreed, Mr. Goodman came to Mr. Porter's office. As Mr. Porter was not in, I greeted Mr. Goodman and sat in Mr. Porter's office with him for about an hour, awaiting Mr. Porter's arrival. During this time, we had a very friendly discussion of the entire case; Mr. Goodman made many comments concerning the charges contained in the letter -- such as "rookie cops arresting him, trying to make a name for themselves" "judges railroading him in court;" "and his lawyer letting him down" that "you didn't stand a chance if arrested in Montgomery County," etc. I listened to him attentively and agreed that "people can receive rough treatment sometimes," etc. I asked him if he had any idea "at this time" as to whether he would resign or take the letter of charges. I again carefully explained to him that if he decided to take

the letter of charges, he would have appeal rights provided by Section 14 of the Veterans Preference Act, if our final decision was to remove him, and that he could be represented by an attorney, etc. I also again told him that if he resigned before the charges were officially preferred against him, they would not appear in his official record; but that if he elected to resign after receiving the letter, the resignation action (Form 50) would have to show that resignation was received after charges had been preferred for the offences listed in the letter. Mr. Goodman again indicated that he "understood all of that." At this point, I learned that Mr. Porter had called in, stating that he would not be in until later in the morning. I, therefore, suggested to Mr. Goodman that he return at 1:00 p.m. to discuss the situation with Mr. Porter as he had requested. At 1:00 p.m. I was in Mr. Porter's office when Mr. Goodman came in. Mr. Porter received him in a very cordial manner, making a few opening remarks which had nothing to do with the subject to be discussed, but designed to "put him at ease." Mr. Porter, having the still unsigned letter of charges before him, carefully explained to Mr. Goodman the circumstances which brought about the letter of charges proposing his removal, as I had previously done. He pointed out the fact that he had not signed the letter, so that if he (Mr. Goodman) elected to resign to prevent the charges from becoming a part of his official record, he would have the opportunity to do so. He further told Mr. Goodman that if he elected to take the letter, he would sign it and hand it to him; that

he would then have the privilege of answering the letter of charges within ten days and, if our final decision was to remove him, he could appeal the action under Section 14 of the Veterans Preference Act, and could engage counsel to represent him in such an appeal, etc., but that if he elected to resign after that, the record would have to show that resignation was tendered after charges had been preferred for the reasons cited in the letter. Mr. Goodman indicated that he understood the situation. After some further statements concerning the charges enumerated in the letter, Mr. Goodman said, "I suppose I'll take the letter. I've been fighting all my life and I might as well fight this." Mr. Porter then signed the letter and handed it to him and had him sign a statement on the bottom of a carbon copy to the effect that he had received the original thereof. Mr. Goodman then left Mr. Porter's office and I returned to my office. I marked my desk calendar to show that Mr. Goodman's reply to the letter of charges was due on October 16, 1961 (ten days after delivery to him). As mentioned above, this action transpired on the afternoon of Wednesday, October 4, 1961. On Thursday, October 5, 1961, Mr. Goodman came to Mr. Porter's office, and again in my presence, stated that "I have been thinking this thing over. I showed the letter to someone and they advised me to resign as soon as possible, so I guess I'll resign." I returned to my office and picked up a copy of Standard Form No. 52,

which is used for resignations and other personnel actions, and returned to Mr. Porter's office. Before Mr. Goodman filled out the resignation part of the Form, he weakly queried, "Will this now go in my record?" Mr. Porter said, "Yes, as we have explained to you before, we have no alternative now to stating that your resignation was received after the letter of charges had been preferred." Mr. Goodman, after examining the Form, asked "What reason should I give for my resignation?" Mr. Porter replied, "Give any reason you want. You can say, for example, 'to look for a better position.'" Mr. Goodman then stated that he knew someone in nearby Maryland who had an electric shop and he had asked him on occasions to come to work for him. He further said, "I might even buy an interest in the shop," etc. Mr. Goodman then used a corner of Mr. Porter's desk to fill out the resignation form, stating the reason for his resignation, "To go outside to advance my self for a better position." He then asked, "What effective date should I show?" To this Mr. Porter replied, "Show any effective date you want; that is, within this month--we are not asking that you leave right away." Mr. Porter then looked at his calendar and said, "Why don't you make it the 27th--that's the last payday in the month?" Mr. Goodman then entered the effective date as October 27, 1961 and signed the Form. He then left the office. Nothing further was heard from Mr. Goodman until the telegram demanding that he be allowed to recall his resignation, etc. was received in this office on Monday morning, October 16, 1961.

Filed September 7, 1965

Department of Commerce
Administrative Order No. 202-20 (Revised)

3 Withdrawal of a Resignation - A resignation which has been accepted may not be withdrawn or postponed thereafter except prior to separation, and then only by approval of the appropriate appointing officer (14 A.G. 260).

Filed May 14, 1965

AFFIDAVIT

District of Columbia, ss:

City of Washington

Glynn H. Goodman, being first duly sworn on oath, deposes and says that he is the Plaintiff herein, that in October, 1961, he retained I. William Stempil as his attorney to set aside his alleged resignation dated October 5, 1961, as electrician in the National Bureau of Standards, Department of Commerce; that the said I. William Stempil passed away in early 1964 and that the first time he learned of Mr. Stempil's death was through an article in a Washington newspaper; that after learning of Stempil's death, he made every effort to contact Mr. Stempil's family in order to get the file of the Civil Service Commission appeal in his case; that he obtained the file in February, 1964; that he has not been negligent or tardy in his claim; as he is not a lawyer, he did not know of the status of the case, until after the death of his former attorney, I. William Stempil.

Glynn H. Goodman

Filed March 27, 1965

MOTION FOR DISCOVERY AND PRODUCTION
OF DOCUMENTS FOR INSPECTION,
COPYING OR PHOTOGRAPHING.

Comes now the Plaintiff by counsel and moves the Court for an order for discovery and production of documents for inspection, copying and photographing pursuant to Rule 34, Federal Rules of Civil Procedure, as the below designated documents are in the possession, custody, and control of the Defendants, and are necessary evidence to the prosecution of Plaintiff's case, and the documents are not privileged. The documents designated are:

1. All inter-office memorandums, letters, and affidavits, pertaining to the alleged resignation and also to the work of Plaintiff.
2. The names, addresses, and telephone numbers of persons who have given statements or affidavits about Plaintiff.
3. All memorandums addressed to or written by Mr. Coiner and Mr. Porter of the National Bureau of Standards, concerning Glynn H. Goodman, Plaintiff.

Donald H. Dalton

Filed May 24, 1965

ORDER

Upon consideration of plaintiff's motion for discovery and production of documents for inspection, copying or photographing and of defendants' opposition thereto, it is by the Court this 24th day of May, 1965

ORDERED that plaintiff's motion for discovery and production of documents for inspection, copying or photographing be and it hereby is denied.

J U D G E

Filed June 11, 1965

Mr. G. R. Porter, NBS
Personnel Officer

March 8, 1965

Mr. W. T. Taylor, Administrative Officer
Plant Division

Resignation of Glynn H. Goodman

I understand from Mr. A. S. Coiner, Personnel Division, that Mr. Brent Quinn, former Assistant Chief, Plant Division, has made a statement concerning what transpired in his office on Oct. 3, 1961, concerning the events which led to the resignation of Mr. Glynn H. Goodman, an employee of this division.

What happened that day is reasonably clear in my mind and the following statement is made as I remember it, since I, as Administrative Officer of this division was present at this meeting.

On Monday, October 2, 1961, Mr. A. S. Coiner, Personnel Generalist called and asked me to arrange a meeting between he and Mr. Brent Quinn, Assistant Chief of the Plant Division, Mr. Glynn Goodman and myself on the next day October 3, 1961, relative to a request from the Commerce Department, that Mr. Goodman be separated from the Bureau because of certain evidence in their possession, which made him an undesirable employee.

On Tuesday morning, Oct. 3, 1961, Mr. Goodman, Mr. Augustyn, Assistant Foreman, Electric Shop and myself met in Mr. Quinn's office. A few minutes after we arrived in Mr. Quinn's Office, Mr. Coiner came in and after a few words of greeting, told Mr. Goodman that in the process of investigating him for a secret security clearance, certain evidence of various arrests were uncovered and that the Department had issued orders to separate him. Mr. Coiner had in his possession an undated and unsigned letter prepared for the Personnel Officers signature listing the charges and proposal to separate Mr. Goodman. Mr. Coiner gave this letter to Mr. Goodman to read, stating that if he wished to resign before this letter was signed and presented formally to him, he could, and this letter would not become an official part of his record. He further stated, that if he elected not to resign the letter would become a part of his record and he would have ten days in which to answer the charges and could

obtain counsel to represent him. Mr. Coiner made it very clear to Mr. Goodman that he was not trying to coerce him into resigning.

Mr. Goodman then stated that he would like to see Mr. Porter, NBS Personnel Officer. Mr. Coiner said that, that would be perfectly all right and that if Mr. Goodman would come in the first thing the next day, he could talk to Mr. Porter.

Mr. Coiner advised me later, on Oct. 4, 1961, that Mr. Goodman had accepted the letter of charges and was going to fight the case.

On October 5, 1961, much to my surprise, Mr. Coiner called me and told me that Mr. Goodman had come into the office and resigned, the effective date to be Oct. 27, 1961. Mr. Coiner asked me to pick up the Form 52 from him and complete action on it.

I brought the Form 52 with Mr. Goodman's signature on it, back to the office where it was logged in and prepared for Mr. Quinn's and my signature. After I signed it, I took it to Mr. Quinn's office for his signature. As is the procedure in this office, personnel actions are normally signed on the same day or no later than the following day. Since this was not an ordinary case, every effort was made to expedite it, and it is reasonably certain that this Form 52 was signed by Mr. Quinn on the same day I presented it to him. After Mr. Quinn signed it, I forwarded it to the Personnel Office for processing.

W. T. Taylor

Filed May 7, 1965

MOTION TO AMEND COMPLAINT AND ALSO
TO ADD THE UNITED STATES AS A
DEFENDANT AND TO SUBSTITUTE JOHN T.
CONNOR FOR LUTHER H. HODGES AS
SECRETARY OF COMMERCE.

Comes now the Plaintiff by counsel and moves the Court to add the United States as a Defendant and to substitute John T. Connor in place of Luther H. Hodges as Secretary of Commerce for the following reasons:

1. Public Law 88-519, 28 U.S.C., 1346(d), August 30, 1964, grants jurisdiction to the United States District Court to award back pay to federal employees.
2. That John T. Connor has succeeded Luther H. Hodges as Secretary of Commerce and that there is a substantial need for continuing and maintaining this action; that John T. Connor adopts or continues or threatens to continue the action of his predecessor in this case.
3. That leave be granted to amend the complaint so as to conform the complaint to the addition and substitution of the Defendants.
4. And for other reasons to be made apparent at the hearing hereof.

Respectfully submitted,

Donald H. Dalton

Filed May 17, 1965

ORDER

Upon Plaintiff's Motion To Amend Complaint And Also To Add The United States As a Defendant And To Substitute John T. Connor For Luther H. Hodges as Secretary of Commerce, and after argument of counsel and for good cause shown, it is by the Court on this 17th day of May, 1965,

ADJUDGED ORDERED AND DECREED,

1. That the United States of America be and is hereby added as a Defendant.
2. That John T. Connor be and is hereby substituted as a Defendant in the place and stead of Luther H. Hodges as Secretary of Commerce.
3. That the Complaint be and is hereby amended.

Luther H. Youngdahl
Judge

Filed July 27, 1965

ORDER

Upon consideration of defendants' motion for summary judgment and of plaintiff's motion for summary judgment, and it appearing to the Court that there is no genuine issue as to any material fact involved in this cause and that defendants are entitled to judgment as a matter of law, it is by the Court this 27th day of July, 1965,

ORDERED that plaintiff's motion for summary judgment be and it hereby is denied, and it is further

ORDERED that defendants' motion for summary judgment be and it hereby is granted and that the action herein be and it hereby is dismissed.

Wilbur K. Miller
Senior Circuit Judge
Sitting by Designation and Assignment

Filed August 26, 1965

TRANSCRIPT OF HEARING ON JULY 26, 1965

RULING BY THE COURT

THE COURT: It seems to me that when Goodman had been given the choice to fight the charges, knowing then that they would become a part of his personnel record, and then came back the next day, without having been subjected to any pressure, and decided to resign, his resignation therefore was voluntary. I think also that it was within the prerogative of the Department not to permit him to withdraw that resignation. I see no merit in the charge that the resignation was altered. Obviously the portion which constituted his resignation was not altered, and the other portions of the form were for the use of the agency involved. I think, therefore, that summary judgment should be awarded to the defendants.

Filed July 29, 1965

NOTICE OF APPEAL

Notice is hereby given this 29th day of July, 1965, that

GLYNN H. GOODMAN, Plaintiff

hereby appeals to the United States Court of Appeals for the District
of Columbia from the judgment of this Court entered on the 27th day
of July, 1965 in favor of Defendant
against said Plaintiff.

Donald H. Dalton
Attorney for Plaintiff

REPLY BRIEF FOR APPELLANT

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19654

GLYNN H. GOODMAN,

Appellant,

v.

UNITED STATES OF AMERICA, et al.

Appellees.

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 1 1966

Nathan J. Paulson
CLERK

Donald H. Dalton
Federal Bar Building
1815 H Street, N. W.
Washington, D. C.
Attorney for Appellant

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In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.

GLYNN H. GOODMAN,

Appellant,

v.

UNITED STATES OF AMERICA, et al.

Appellees.

Appeal from the United States District Court
for the District of Columbia

REPLY BRIEF FOR APPELLANT

Judge Charles Fahy in Dabney v. Freeman, U. S. App. D. C.

No. 19207, Decided December 28, 1965, in a dissenting opinion clearly
raises the significant issue — why did the trial judge give summary
judgment for appellees?

In the well reasoned opinion, Judge Fahy stated:

"There is another difficulty I have with the disposition
of this appeal. We do not know why the trial judge gave

"summary judgment for appellees. The practice has grown up, encouraged no doubt by the failure of this court to indicate dissatisfaction with it, of granting summary judgment in employee discharge cases without any indication of the basis therefor except the language of Rule 56(c), namely, that there is no genuine issue of material fact and defendants are entitled to judgment as a matter of law. Were there only an issue of law nothing more would be needed; but in reviewing administrative factual findings on an administrative record the court is not confronted with a mere legal issue in the usual sense. On the administrative record upon which the court acted in this case there was a genuine issue of material fact as to coercion. This issue could be disposed of by summary judgment only if the court found that the Commission finding met the correct standard of review. No trial de novo being required judgment could then be entered for the defendants as a matter of law. But unless we can ascertain that the court reached its conclusion under the proper standard of review we should not affirm summary judgment. In *Grant v. Benson*, 97 U.S. App. D.C. 191, 195, 229 F. 2d 765, 769, heard by the District Court on the administrative record, we pointed out that the court found that 'the findings and conclusions of the Secretary were based on and supported by substantial evidence in the record.' And see *Minkoff v. Payne*, 93 U. S. App. D.C. 123, 126, 210 F. 2d 689, 692, though the situation there was not so clear. And see *National Broadcasting Co., Inc., et al. v. United States, et al.*, 47 F. Supp. 940, at 946-7, where Judge Learned Hand held for a three-judge District Court that 'there was substantial support for the findings in the record.' When the case reached the Supreme Court and a like conclusion was stated this was after the District Court determination had been made under a standard correctly set forth. *National Broadcasting Co. v. United States*, 319 U.S. 190, 224. So that even were the prevailing standard in employee discharge cases to be applied here, I think the District Court should disclose the basis for holding there was no genuine issue of material fact."

Summary Judgment Should Not Be Granted Where There Is A Bonafide Dispute of Facts As To Genuine Issues.

In support of appellant's contention is the granting of certiorari by the Supreme Court of the United States in Aratani v. Kennedy, 375 U.S. 877, 11 L. Ed. 110, 84 S. Ct. 147. This Court's opinion is in 115 U. S. App. D. C. 97, 317 F. 2d 161.

Aratani is clearly in point. Summary judgment should not be granted where there are material issues of fact in controversy. Hunter v. Mitchell 180 F. 2d 763; 86 U. S. App. D. C. 121 (1950); Evans v. Buxbaum, 253 F. 2d, 356, 102 U. S. App. D. C., 334 (1958); Paroczay v. Hodges, 297 F. 2d 439.

In the leading case on summary judgment, Dewey v. Clark, 86 U.S. App. D. C. 137, 180 F. 2d 766, 772, Judge Fahy, speaking for the Court, stated:

"Factual issues are not to be tried or resolved by summary judgment procedure; only the existence of a genuine and material factual issue is to be determined."

See cases cited in Dewey v. Clark, supra, Vale v. Bonnett, 191 F. 2d 334.

There is a bonafide dispute of facts.

Appellant Raised A Substantial Question In That The Addition Of Derogatory Matter On The Form 52 Is Repugnant To The Due Process Clause.

Appellees cavalierly ignored the constitutional question raised by the illegal additions on Form 52. It is like a trick picture which

superimposes films, appearing on one picture.

The Form includes the following statement by appellant as his reason for resigning:

"To go outside to advance myself for a better position."

Below on the same page is derogatory information showing why the resignation was requested.

In the light of the Supreme Court's decision in Greene v. McElroy, 360 U.S. 474, Harmon v. Brucker, 355 U.S. 579; ex parte Milligan, 4 Wall. 2, 18 L. Ed. 281; Youngstown Sheet & Iron v. Sawyer, 343 U.S. 579; ex parte A. H. Garland 4 Wall. 377, 18 L. Ed. 366; Galvin v. Press, 347 U.S. 522; Breithaupt v. Abram, 352 U.S. 432, a long argument is unnecessary to establish the importance that a substantial Constitutional question is raised by appellant's issue that the filling in of the blanks of the Form 52 is repugnant to the due process clause of the Fifth Amendment of the Constitution.

In Sweden, the question raised here could be solved by the "Ombudsman". Yale Law Journal, November, 1965, Professor Walter Gellhorn, Betts Professor of Law at Columbia University.

Professor Gellhorn states:

"For one who thinks in American terms the ombudsman system seems a useful device for occasionally achieving interstitial reforms, for somewhat countering the impersonality, the insensitivity, the automaticity of bureaucratic methods and for discouraging official arrogance. To rely

"on one man alone - or even on a few men - to dispense administrative wisdom in all fields, to provide social perspective, to bind up personal wounds, and to guard the nation's several liberties, seems a short sighted way of coping with the twentieth century."

Our courts have not been hesitant in the matter of negotiable instruments to declare an instrument void if it is altered. It is submitted that the same principal applies in a resignation on a Form 52.

CONCLUSION

That the case be reversed with judgment for appellant.

Respectfully submitted,

Donald H. Dalton
Federal Bar Building
1815 H Street, N. W.
Washington, D. C.
Attorney for Appellant

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BRIEF FOR APPELLEES

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,654

GLYNN H. GOODMAN, APPELLANT,

v.

UNITED STATES OF AMERICA, ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID G. BRESS,

United States Attorney.

FRANK Q. NEBEKER,

ELLEN LEE PARK,

CHARLES L. OWEN,

Assistant United States Attorneys.

C.A. No. 2757-64

1965

QUESTIONS PRESENTED

1) Is there evidence of substance in the record to support the Civil Service Commission's findings that

(a) the appellant's resignation was voluntarily submitted and

(b) the agency's refusal to permit its withdrawal was proper?

2) Does the doctrine of laches bar the appellant's claim for relief when he delayed his appeal to the Commission's Board of Appeals and Review for nearly twenty-nine months?

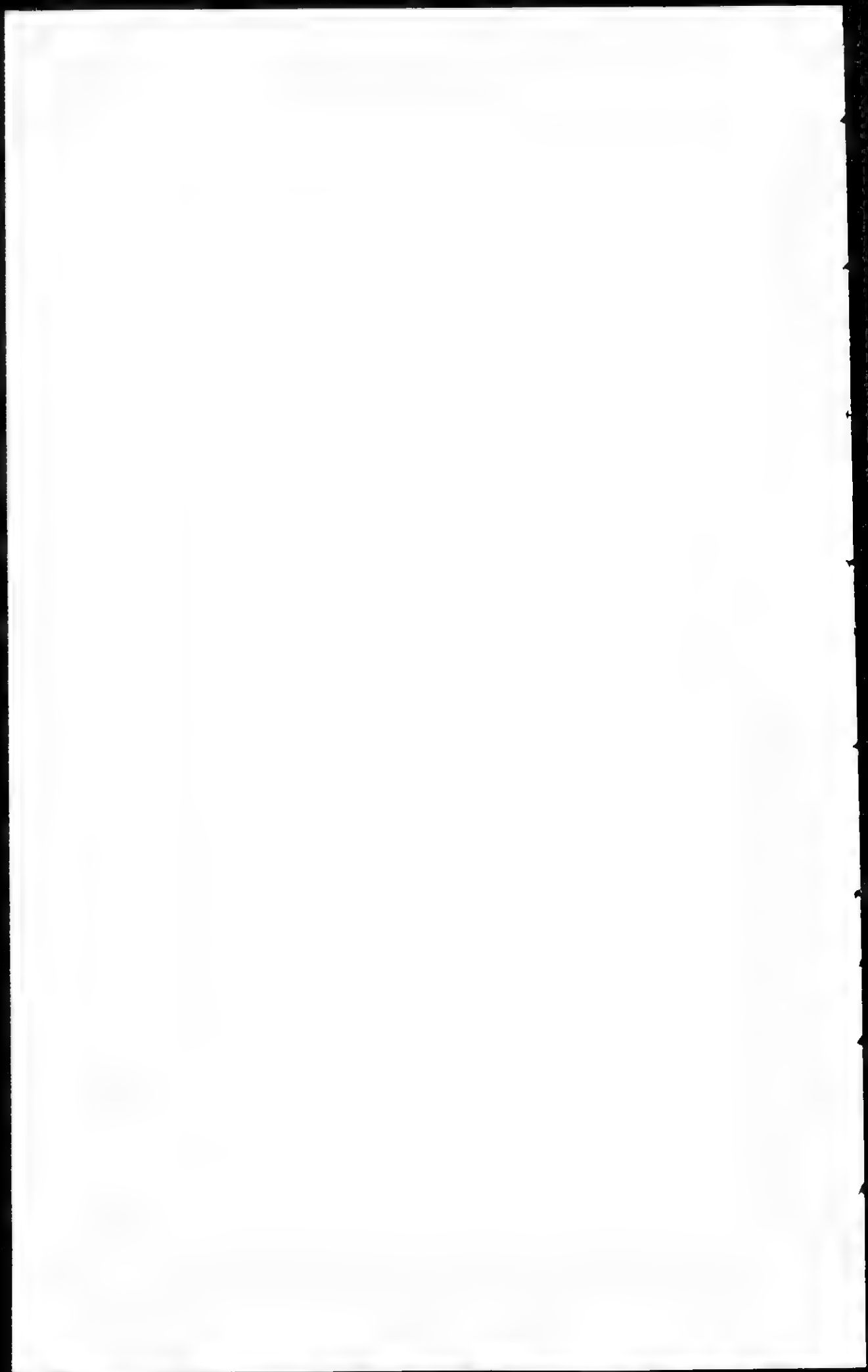
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,654

GLYNN H. GOODMAN, APPELLANT,

v.

UNITED STATES OF AMERICA, ET AL., APPELLEES.

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

This case involves a former Government employee who alleges that his resignation from the National Bureau of Standards was coerced and that his attempted withdrawal of the resignation thereafter was improperly refused. The Civil Service Commission, however, acting through its Board of Appeals and Review, found that the resignation had been voluntarily submitted and properly accepted. Seeking reinstatement and back pay, the employee filed suit in the district court. Cross-motions for summary judgment revealed the parties' agreement that there was no genuine issue of material fact. The instant appeal is from an order of the district court granting summary judgment to the appellees.

The employee, Glynn H. Goodman, was employed as an electrician at the National Bureau of Standards from September 1958, to October 1961. In May of the latter year a security clearance was sought to permit his entry and work in restricted areas (Government Exhibit No. 2, Coiner Memo). During the investigation derogatory information was uncovered, including the fact that Goodman had been arrested by Maryland police in 1959 for exhibiting obscene material to a sixteen (16) year old boy (Government Exhibit Nos. 1 & 2, Letter of Charges). Believing this information to warrant removal proceedings, personnel officer Porter prepared a letter of charges. It was left undated and unsigned for the moment and a meeting between the appellant and personnel officer Coiner was arranged. (Government Exhibit No. 2, Coiner Memo.)

At the meeting Coiner explained that the letter of charges had been left undated and unsigned to afford Goodman the opportunity to resign before it became a part of his official record. The Bureau's position was further clarified: appellant was not being asked to resign; if, however, he did not resign the letter would be dated, signed, and delivered to him as a part of his record. Goodman asked to speak with Porter and, after talking with him, declared that he would fight the charges. Porter's letter containing the derogatory information was then dated, signed and handed to the appellant who acknowledged receipt on October 4, 1961. (Government Exhibit No. 1, Letter of Charges, p. 6; Government Exhibit No. 2, Coiner Memo.)¹

Goodman returned to Porter's office, unannounced, on the following day. He stated that after thinking the matter over and obtaining the advice of others he had decided to resign from the Bureau (Government Exhibit No. 2, Coiner

¹ Coiner states that Goodman was first informed about the accusations against him on October 3, 1961, that he accepted the letter of charges on October 4 after speaking with Porter, and that he resigned on October 5. The appellant, however, swore that he did not know of the charges before October 4, the same day he accepted them. See Government Exhibit No. 1, Goodman Affidavit. He agreed that his resignation was submitted on October 5.

Memo).² A form 52 request for personnel action was obtained and the appellant tendered his resignation by completing Part III. When he inquired about an appropriate "effective date" for termination of his service, Porter suggested October 27, the last payday of the month. As the reason for his action Goodman wrote "to go outside to advance myself for a better position." (Government Exhibit No. 1, Standard Form 52, pp. 22-23.) Pursuant to Department of Commerce regulations binding on the Bureau, the resignation was accepted at this time by the personnel officers.³

A telegram purporting to withdraw the resignation was sent to the Bureau by Goodman ten days later, on October 16, 1961 (Government Exhibit No. 1, p. 27). Separate letters from Porter and the associate director of the agency explained that a resignation could be withdrawn only with the consent of appropriate Bureau personnel and that it would not be forthcoming in the present case (Government Exhibit No. 1, pp. 24, 26).⁴ An appeal was taken to the Civil Service Commission on November 16, 1961. The Appeals Examining Office of the Commission advised Goodman by letter that his election to resign rather than to face removal proceedings had cut off any right of appeal he might otherwise have had. (Government Exhibit No. 1, p. 19.) Nearly twenty-nine months later, in April 1964, he appealed within the Commission to the Board of Appeals and Review. Affidavits and written argument by the appellant, as well as the administrative record of the Bureau, were considered by the Board whose findings were set

² At the hearing on cross-motions for summary judgment in the district court appellant's counsel agreed that the resignation was submitted one day after his client had decided to fight the charges. When asked what had happened between these two days, October 4 and October 5, he replied: "Nothing." (Tr. 13.)

³ See Government Exhibit No. 3, Manual of Orders, Section 3.01, 2.

⁴ See Government Exhibit No. 3, Manual of Orders, Section 3.01, 3.

forth in a letter to Goodman's attorney on September 15, 1964:

- (1) The resignation was voluntarily submitted on October 5, 1961,
- (2) the resignation was binding on the employee from the time it was submitted, and
- (3) the Appeals Examining Office decision to decline jurisdiction was correct.⁵

SUMMARY OF ARGUMENT

Judicial review of a finding by the Civil Service Commission in an employee discharge case is limited to whether there is evidence of substance in the record to support the Commission. Through its Board of Appeals and Review, the Commission here determined that appellant's resignation from the National Bureau of Standards was voluntarily submitted. The case was then dismissed for lack of jurisdiction because no adverse action by the Bureau could be found. Ample evidence of record supports the finding of voluntariness. The appellant knew that he could resign before the letter of charges became a part of his official record of service; instead, he chose to accept the letter and to defend himself in a removing proceeding, insuring that the letter would be included in his file. His subsequent resignation therefore did not come at a time when he was faced with the choice that he terms "coercive."

Appellant's attempt to withdraw his resignation prior to the effective date recited in it was not consented to by the Bureau. Both the Federal Personnel Manual and relevant administrative order provide that a resignation is binding on an employee once he has submitted it unless the employer consents to the requested withdrawal. The Board of Appeals and Review found that there had been no consent to a withdrawal here and that the employee

⁵ The facts set out above were also contained in a "Statement of Material Facts" filed by the appellees in support of their motion for summary judgment below. None were controverted by appellant. In ruling on the motion, therefore, the Court was entitled to take these facts as admitted. D.D.C. Rule 9(h).

was accordingly bound by it. Appellant's reference to contracts and negotiable instruments notwithstanding, he has cited no regulation to the contrary and no reason for invalidating the authority relied upon by the appellees. The third issue raised by appellant was not made before the Commission and should not therefore require a decision. In all events there is no regulation or constitutional right that would entitle the appellant to resign on a form that has no space for pertinent agency comment.

From November 1961, until April 1964, Goodman did not appeal within the Commission to the Board of Appeals and Review. This delay was solely attributable to the appellant, and if reinstatement were required, could result in a substantial payment of back wages. See 5 U.S.C.A. § 652(b). The appellees, therefore, respectfully submit that, without regard to the merits of the appellant's claim, relief should be barred under the *laches* doctrine.

ARGUMENT

I. There is evidence of substance in the record to support the Civil Service Commission's findings.

An employee covered by the Veterans' Preference Act⁶ may appeal his discharge from federal service to the Civil Service Commission. 5 U.S.C. § 863 (1959); 5 C.F.R. pts. 752, 772 (1964). His resignation from a Government position, however, precludes review by the Commission which only has jurisdiction in those cases involving adverse action by an agency. 5 C.F.R. §§ 752.201, 752.203 (1964). On the theory that a coerced resignation is tantamount to a discharge, this Court has nevertheless approved Commission inquiry into the circumstances surrounding a resignation when the employee makes a non-frivolous allegation that he was forced to act as he did. See *Dabney v. Freeman*, No. 19,207, decided December 28, 1965. If the resignation is found to have been voluntarily submitted the Commission must decline jurisdiction and, on appeal to the district

⁶ 5 U.S.C. §§ 851-69 (1959). Appellant states, by pleading and affidavit, that he was partially disabled in World War II and is classified as a preference eligible veteran.

court, the decision should be affirmed "if there is evidence of substance . . . which supports the Commission's view of the matter."⁷

The record before the Commission in the instant case, including the letter of appeal to the Appeals Examining Office in 1961 and the extensive argument with supporting affidavits submitted to the Board of Appeals and Review in 1964, shows that Goodman was confronted with the choice of resigning or defending himself at a removal proceeding. The mere choice between two unpleasant alternatives of this sort does not amount to coercion. If it did, the employee could not be offered the chance to resign with a clear record because that resignation would always be subject to challenge at the Commission and in the courts. Faced with the same question in *Rich v. United States*, 106 U.S. App. D.C. 343, 344, 273 F.2d 78, 79 (1959), this Court concluded: "The Director did not act illegally or improperly in telling appellant he could choose between facing charges and resigning."⁸ Assuming, for the moment, that appellant

⁷ *Dabney v. Freeman*, *supra*, p. 4 of Slip Opinion. The standard of review has been variously stated in the opinions of this Court. See, e.g., *Pelicone v. Hodges*, 116 U.S. App. D.C. 32, 33, 320 F.2d 754, 755 (1963) (whether the Commission action was "arbitrary and capricious") *Eustace v. Day*, 114 U.S. App. D.C. 242, 314 F.2d 247 (1962) (whether "there is a rational basis for the conclusions reached by the administrative agency").

⁸ Appellant asserts that his situation is similar to the one presented in *Paroczay v. United States*, 111 U.S. App. D.C. 362, 297 F.2d 439 (1961). In that case, however, there was a demand for "immediate resignation under threat of immediate charges," and the Court held that this created a genuine issue of material fact which could not be appropriately decided by motion for summary judgment. There is no allegation in the instant case that Goodman was forced to make an immediate choice. In fact, since he had already accepted the letter of charges (Government Exhibit No. 1, p. 32) and knew that they had become a part of his official record (Government Exhibit No. 2, Coiner Memo), his unrequested resignation on October 5, 1961, appears to have been a personal decision on his part to avoid removal proceedings and not a move to protect his service record. As in *Rich v. United States*, *supra*, it appears that Goodman's resignation came after he had consulted with others about the advisability of fighting the charges (See Government Exhibit No. 2, Coiner Memo, p. 5).

could establish that pressure was brought to bear on him when he was interviewed on October 4, it is undisputed that he did not succumb to it. After reading the charges and conferring with personnel officer Porter, Goodman elected to accept the letter. From that point on the Bureau had no choice to offer appellant because an authorized letter of charges must become a part of the employee's file as he knew. Government Exhibit No. 2, Coiner Memo, pp. 3, 4, 5. The allegations, therefore, that Goodman was sick, nervous and upset on October 5, 1961, are immaterial since there is no claim that Bureau personnel contacted him between the time he accepted the charges and the time he resigned.

On the basis of these allegations alone the Board of Appeals and Review might have been justified in declining jurisdiction of what was essentially a frivolous appeal. Instead, the Board reviewed the entire record and determined that the resignation was voluntary.⁹ The appellant did not demonstrate to the district court that the Board's action was without support in the evidence and the appellees submit he has not done so here.¹⁰

Appellant also contends that he should have been allowed to withdraw his resignation. But the Federal Personnel Manual and relevant administrative order of the Department of Commerce provide that a resignation is binding on an employee once he has submitted it and that it may not be withdrawn without approval of the employer. See Government Exhibit No. 3, p. 4; Government Exhibit No. 4, p. 1.

⁹ Since the appellant at no time controverted the facts contained in the administrative record or alleged by the appellees, it is understandable that he did not request a hearing before the Board to resolve factual disputes. See 5 C.F.R. § 772.307(b).

¹⁰ The district court granted summary judgment to the appellees. If the appellant were to claim that the court below did not set out what standard of review was used, the appellees ask this Court to recognize once again that the standard of arbitrariness has long been used in review of federal personnel cases. The only alternative supporting summary judgment, an independent determination of the facts by the district court, would have given the appellant more than he was entitled to. *Dabney v. Freeman*, No. 19207, decided December 28, 1965, pp. 8-9 of Slip Opinion.

Appellant's reference to contracts and negotiable instruments notwithstanding, the Board of Appeals and Review held that a resignation was "binding upon the employee once he has submitted it." Government Exhibit No. 1. No contrary regulation or holding has been cited by the appellant.¹¹

II. The doctrine of laches should bar the appellant's claim for relief when he delayed his appeal to the Commission's Board of Appeals and Review for nearly twenty-nine months.

Appellees contend for the foregoing reasons that appellant's resignation was voluntary and binding upon him and that he is not entitled to any relief herein. Assuming, however, that he could show some defect in connection with his separation from government service, his claim for relief is barred under the doctrine of *laches*.

There is no dispute that appellant resigned in October 1961; that the Appeals Examining Office of the Civil Service Commission declined to accept the appeal which appellant's counsel filed on his behalf in November 1961; and that appellant did not institute this action until approximately two and one-half years later. If, as Goodman contends, his resignation was involuntary, it was incumbent upon him to be prompt in effectively asserting his rights. In the leading

¹¹ Appellant's third contention is that he was prejudiced by the remarks entered by Bureau personnel on his resignation form. Standard Form 52 has three sections; two are for use of the agency in which the personnel action occurs and one is for the resigning employee. Because the Bureau completed parts 1 and 2 so that they would reflect that the resignation was given when charges were pending, Goodman claims he is entitled to some unspecified relief, presumably reinstatement. At the outset it should be noted that this point was not urged on the Commission, and accordingly, it should not be heard for the first time on appeal to the district court or here. See *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33 (1952). Setting aside the procedural defect, however, appellant evidently desires a ruling from this Court to the effect that a separate form must be supplied for the employee's resignation. He has, however, found no authority for that proposition. If this claim is interpreted to mean that the resignation was void because appellant did not know that adverse notations

case of *Arant v. Lane*, 249 U.S. 369, 372, the Supreme Court stated:

"When a public official is unlawfully removed from office, whether from disregard of the law by his superior or from mistake as to the facts of his case, obvious considerations of public policy make it of first importance that he should promptly take the action requisite to effectively assert his rights, to the end that if his contention be justified, the Government service may be disturbed as little as possible, and that two salaries shall not be paid for a single service."

This Court quoted the above language of the Supreme Court when it concluded in the case of *Grasse v. Snyder*, 89 U.S. App. D.C. 352, 192 F.2d 35 (1951) that even though there might be merit to the appellant's case his delay of 16 months in filing suit, while detriments were accumulating against the Government, constituted laches which barred his claim. Appellees, therefore, submit that the delay occasioned by appellant in the instant case has operated to their prejudice in the form of accrued back pay, 5 U.S.C.A. § 652(b), and that the claim should accordingly be barred.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

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ELLEN LEE PARK,
CHARLES L. OWEN,
Assistant United States Attorneys.

would appear on the same form he used to resign, the appellees note that there is no allegation in this case that Bureau personnel ever stated that the form was for Goodman's use alone, and furthermore, that the contention is wholly immaterial since the Commission has determined that the resignation was voluntary. See *Competello v. Jones*, 105 U.S. App. D.C. 412, 267 F.2d 689 (1959).